

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(PJC)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**REPLY IN SUPPORT OF STATE OF OKLAHOMA'S MOTION TO MODIFY
APRIL 24, 2009 SCHEDULING ORDER [DKT #2003]**

The State of Oklahoma ("State") respectfully submits this reply in further support of its motion for an order modifying the April 24, 2009 Scheduling Order to extend the date for certain of the State's *Daubert* motions on Defendants' experts.

Regarding the requested extension until June 19, 2009 to file *Daubert* motions on Defendants' experts Drs. Bierman, Sullivan, Myoda, Johnson and Horne, Defendants fail to acknowledge that:

- Because Defendants' disclosure of their more than 20 non-damages experts did not occur until December 2008 and January 2009, the State has been occupied with diligently preparing for and taking these deposition these past several months -- time that could not be dedicated to preparing *Daubert* motions. In contrast, Defendants received disclosure of the State's non-damages experts in May 2008, and largely finished the depositions of those experts by the end of January 2009 -- thus allowing Defendants ample time to prepare their *Daubert* motions.
- Despite the fact that discovery had been open for some three years, Defendants waited until the eleventh hour to conduct the lion's share of their deposition discovery. In fact,

between March 1, 2009 and the April 16, 2009 discovery cut-off, Defendants noticed up more than 50 depositions. Covering these eleventh hour depositions diverted resources that the State could have applied to preparing its *Daubert* motions.

- And the Court's alteration of the *Daubert* deadline in its April 24, 2009 Order -- which reduced the time the State had anticipated having to prepare its *Daubert* motions by seven weeks -- disproportionately affects the State due to the above-mentioned staggered expert disclosure deadline.

In short, contrary to Defendants' assertion, the State has not had "ample time" to prepare its *Daubert* motions. The State's request for an extension for the *Daubert* filing deadline until June 19, 2009, regarding Defendants' experts Drs. Bierman, Sullivan, Myoda, Johnson and Horne is warranted.

Regarding the requested extension until July 10, 2009 to file *Daubert* motions on Defendants' experts Drs. Merritt, Chadwick and Cummins, Defendants' position is inconsistent with an agreement they made with the State. Because the final expert reports of Drs. Merritt, Chadwick and Cummins are not due to be disclosed to the State until May 30, 2009, *see* DKT #1756 (August 8, 2008 Order), the parties agreed, to save time and expense, that it would be most efficient to take a single deposition of each of these experts, rather than take two depositions -- one on their interim report and one on their final report. Deposition dates were agreed upon to accommodate not only counsel, but also Defendants' experts, and, as noted in the State's Motion, are scheduled to be completed on June 30, 2009. Although it would be tight, the State believed it would be able to meet the original July 8, 2009 deadline. Now, after the Court moved the second-wave *Daubert* deadline to June 19, 2009, Defendants are taking the wholly unreasonable position that the State should be placed in the untenable position of having to file

its *Daubert* motions prior to even being afforded the opportunity to complete its depositions of all three of these experts. That is fundamentally unfair. The State's request for an extension for the *Daubert* filing deadline until July 10, 2009, regarding Defendants' experts Drs. Merritt, Chadwick and Cummins is warranted.

Conclusion

Accordingly, the State submits that good cause exists for the limited extensions requested, and such extensions should be granted.

Respectfully Submitted,

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